(907) 276-6222;

STATE OF ALASKA

THE REGULATORY COMMISSION OF ALASKA

Before Commissioners:

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Robert M. Pickett, Chairman Kate Giard Paul F. Lisankie Anthony A. Price Janis W. Wilson

In the Matter of the Tariff Revision Designated as TA172-4, Regarding a Proposed Gas Cost Adjustment for 2009 Filed by **ENSTAR** NATURAL GAS COMPANY, A DÍVISION OF SEMCO ENERGY, INC.

U-08-142

ORDER NO. 14

DISSENTING STATEMENT OF COMMISSIONER JANIS W. WILSON

While I agree with most of the majority's analysis, I disagree on one major point—the significance of the Moquawkie settlement in this case. As a result, I dissent from the majority's end result, disallowing the Fort Richardson costs. I would allow recovery.

Aurora Gas LLC ceased delivering gas from the Moguawkie field to ENSTAR under a provision of its contract known as an "economic out" provision. ENSTAR was in no way responsible for the cessation of deliveries. The Moguawkie contract was the lowest-priced gas in ENSTAR's portfolio. When Aurora Gas stopped deliveries, ENSTAR's gas sales customers were forced to pay more per unit for their gas.

ENSTAR acted in gas sales customer interests by evaluating the merits of its possible claim against Aurora Gas and, apparently believing it could prevail, commencing litigation against Aurora Gas. ENSTAR was able to reach a settlement with Aurora Gas which paid ENSTAR more than \$11 million. After deducting its litigation costs, ENSTAR passed the remaining amount, more than \$10 million, through

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The Moquawkie litigation ended well for ENSTAR and its gas sales customers. But there was no assurance that it would. Litigation is a serious undertaking with potentially serious consequences. If ENSTAR was wrong in bringing suit, it could end up paying the other side's attorney fees as well as its own litigation costs of more than \$1 million. And, if ENSTAR had collected nothing from Aurora, despite great expenditure, we might be here determining whether ENSTAR could recover its Moquawkie litigation costs. Thus, ENSTAR's money was truly at risk in the litigation.

Under the peculiar circumstances presented in this case, I believe ENSTAR should benefit from the good stewardship of gas sales customer interests evidenced by the Moquawkie settlement as an offset to the devastating mistake it made at Fort Richardson. I believe this sends the appropriate signal to ENSTAR that it is worth the risk to zealously pursue gas sales customer interests.

DATED AND EFFECTIVE at Anchorage, Alaska, this 1st day of March, 2010.

Janis W. Wilson, Commissioner